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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 94-1374

In the Matter of)
)
Amendment of Section 73.606(b),) MM Docket No. 94- 143
Table of Allotments,)
Television Broadcast Stations.)
(Albion, Nebraska))

NOTICE OF PROPOSED RULE MAKING

Adopted: December 1, 1994

Released: December 5, 1994

Comment Date: January 26, 1995

Reply Comment Date: February 10, 1995

By the Acting Chief, Allocations Branch:

1. The Commission, on its own motion, proposes to allot UHF Channel 24 to Albion, Nebraska, in order to permit Citadel Communications Co., Inc. ("Citadel Communications") to amend its pending mutually exclusive application (File No. BPCT-930726KH) for Channel 18 in Albion, to specify operation on Channel 24.¹ In the event any interested party expresses a timely interest in a UHF allotment in Albion, we are prepared to allot Channel 40 to accommodate this interest.

Background

2. Citadel Communications is the licensee of television Station KCAN, Channel 8, Albion, Nebraska.² In Albion, Lincoln, and Columbus, Nebraska, 6 FCC Rcd 2876 (1993), we substituted UHF Channel 18 for VHF Channel 8 at Albion, allotted VHF Channel 8 to Lincoln, and modified the Citadel Communications Station KCAN

¹The reference coordinates for Channel 24 at Albion, Nebraska, are 41-55-48 and 98-17-23.

²Citadel Communications operates Station KCAN in Albion as a satellite of commonly owned television Station KCAU, Channel 9, Sioux City, Iowa. Station KCAU is an ABC network affiliate.

license to specify Lincoln as the community of license. That action was specifically premised on the pledge of Citadel Communications to file an application for Channel 18 in Albion and operate it as a satellite of Station KCAU.

3. Fant Broadcasting of Nebraska, Inc. filed a competing application for the Channel 18 allotment in Albion proposing a full-service facility (File No. BPCT-931115KF). At the present time, there is no basis upon which to designate these applications for a comparative hearing or to otherwise resolve these mutually exclusive applications. See Bechtel v. Federal Communications Commission, 10 F3d 875 (D.C. Cir. 1993).

4. In regard to the underlying Channel 18 allotment, the Notice in Albion, Lincoln, and Columbus, Nebraska, supra, specifically stated that Channel 18 was being proposed in order to allow Citadel Communications to continue its existing ABC network affiliated satellite service to Albion, 6 FCC Rcd 6038 (1991). Had Fant Broadcasting expressed an interest in operating a full-service station in Albion, we would have allotted an additional channel to accommodate that expression of interest. See, e.g., Roseburg, Oregon 6 FCC Rcd 4369 (1991). Cf. Copeland, Kansas, 5 FCC Rcd 7682 (1990); Lander, Wyoming, 46 FR 39605 (August 4, 1981); West Palm Beach, Florida, 46 RR2d 1272 (1980); Rapid City, South Dakota, 6 FCC Rcd 4471 (1991). At this juncture, we see no public interest benefit in delaying resolution of the Albion proceeding. On the contrary, we believe that resolving this matter as quickly as possible and providing Albion with its first full-service television station, providing a second television service in Albion and retaining ABC network-affiliated satellite service provide overriding public interest benefits. For these reasons, we propose to allot Channel 24 to Albion and permit Citadel Communications to amend its pending application for Channel 18 to specify operation on Channel 24 without loss of cut-off protection.

5. In view of the above and the fact that the proposed allotment would provide a second television service to Albion, Nebraska, we propose to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the following community:

Community	Channel No.	
	Present	Proposed
Albion, Nebraska	18 ³ , *21+	18, *21+, 24

³Channel 18 was reallocated from Albion to Lincoln, Nebraska, in Albion, Lincoln, and Columbus, Nebraska, supra. In view of the fact that Pappas Telecasting of the Midlands and Busse Broadcasting Corporation have filed petitions for reconsideration directed to that action, the reallocation is not final.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

7. Interested parties may file comments on or before January 26, 1995, and reply comments on or before February 10, 1995, and are advised to read the Appendix for the proper procedure. Additionally, a copy of such comments should be served on the applicants for the Channel 18 allotment at Albion, as follows:

Fant Broadcasting of Nebraska, Inc.
c/o Fletcher, Heald & Hildreth
1300 North 17th St.
Rosslyn, Virginia 22209

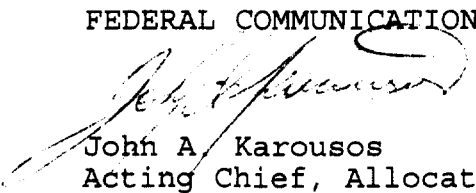
Citadel communications Co., Inc.
c/o Latham & Watkins
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

9. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new information shall be served by the person by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the

petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION



John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

MM Docket No. 94- 143

RM-

1. Pursuant to authority contained in Sections 4(i), 5(c) (1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket,

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.